

Appl. No. : 10/663,381  
Filed : September 15, 2003

## SUMMARY OF INTERVIEW

### Exhibits and/or Demonstrations

During the interview, Applicants' counsel demonstrated a currently commercially available sample of the shoulder sling disclosed in the present application.

### Identification of Claims Discussed

Claims 1, 13, 15, and 23.

### Identification of Prior Art Discussed

U.S. Patent No. 6,659,971 to Gaylord

U.S. Patent No. Des. 317,840 to Jagdat

U.S. Patent No. 4,598,701 to Schaefer

U.S. Patent Application Publication No. 2004/0129278 to Itoi

### Proposed Amendments

During interview, Applicants counsel proposed amending Claims 1, 15, and 23 to recite that the wearer's arm is maintained in a position of external rotation which, in each claim, was originally recited in the preamble.

### Principal Arguments and Other Matters

During the interview, Applicants' counsel pointed out that neither Gaylord, Schaefer, nor Jagdat teaches a shoulder sling which supports the wearer's arm in a position of external rotation. Additionally, with respect to Claim 13, Applicants' counsel pointed out that none of the references of record teach a shoulder sling for supporting a wearer's arm at desired angles of abduction and external rotation in which an upper surface of the pillow of the shoulder sling includes a straight indicator line that provides a visual cue to the wearer so that the wearer knows when the sling is properly fitted.

In particular, Applicants' counsel pointed out that the straight lines identified by the Examiner in the outstanding Office Action in the Schaefer reference, and in particular, Velcro pads 18, 19, 20, and 21, would not be visible to a wearer of this shoulder sling. Thus, these straight lines represented by the Velcro pads could not be used by a wearer of the device of Schaefer as an indicator as to when the sling is in its proper orientation. The Schaefer reference itself, particularly in Figures 1 and 2, shows that these Velcro pads are not visible when a wearer is wearing the sling of Schaefer.

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For example, as shown in Figure 1, the Velcro pad designated by numeral 21 in Figure 4, is covered by a strap 29 in Figure 1. Additionally, the remaining Velcro pads are also covered by other straps when the sling is being worn by a wearer. Thus, these Velcro pads cannot provide a visual cue to a wearer because the wearer cannot see them when the sling is being worn.

Results of Interview

As a result of the interview, Examiners Ali and Bennett agreed that the outstanding rejections of Claims 1, 15, and 23 would be overcome if these claims were amended to recite that the wearer's arm is maintained in a position of external rotation in the body of the claim.

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## REMARKS

### A. Introduction

Claims 1-13 and 15-28 are now pending in the present application, Claims 1, 7, 15, and 23 having been amended and new Claims 26-28 having been added. The claims set forth above include marking to show the changes made by way of the present amendment, deletions being in ~~strikeout~~ or [[double brackets]] and additions being underlined.

Applicants would initially like to thank Examiners Ali and Bennett for the courteous interview extended to Applicants' counsel, Michael A. Guiliana, on March 2, 2005, during which the outstanding rejections were discussed. The substance of the interview is set forth in the preceding section of this Amendment and in the comments set forth below with regard to each of the outstanding rejections. In accordance with the interview, Applicants have amended Claims 1, 15, and 23 as discussed during the interview and Applicants have added new dependent Claim 27 which makes reference to orthogonal directions relative to the wearer in regard to the straight indicator line recited in Claim 13. On the basis of the interview and in response to the Office Action mailed November 16, 2005, Applicants respectfully request the Examiner to reconsider the above captioned application in view of the foregoing amendments and the following comments.

### The Proposed Combination Of Gaylord/Jagdat Does Not Make Claims 1, 2, 4, 8, 15-18, and 22 Obvious

Claims 1, 2, 4, 8, 15-18, and 22 stand rejected under 35 U.S.C. § 103(a) as being obvious over Gaylord in view of Jagdat. Applicants respectfully traverse the present rejection. However, in order to expedite prosecution under the present application, Applicants have amended Claims 1 and 15. Applicants expressly reserves the right to further prosecute the original version of Claims 1-9 and 15-22 through continuation practice.

As a result of the interview, the Examiners agreed that the Gaylord and Jagdat references do not disclose or suggest shoulder slings that are configured to maintain a user's arm in a position of external rotation. Thus, even though Claims 1 and 15 already recited shoulder straps for supporting a wearer's arm at a position of external rotation, Applicants have amended Claims 1 and 15, as agreed during the interview, to recite in the body of the claim that the

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wearer's arm is maintained in a position of external rotation. Thus, as agreed during the interview, Claims 1 and 15 define over the Gaylord and Jagdat references.

Applicants also submit that Claims 2, 4, 8, 16-18, and 22 also define over the cited references, not only because they depend from one of Claims 1 or 15, but also on their own merit.  
The Proposed Combination Of Gaylord/Schaefer Does Not Make Claims 23 And 25 Obvious.

Claims 23 and 25 stand rejected under 35 U.S.C. § 103(a) as being obvious over Gaylord in view of Schaefer. Applicants respectfully traverse the present rejection. However, in order to expedite prosecution of the present application, Applicants have amended Claim 23. Applicants expressly reserve the right to further prosecute the original version of Claims 23-25 through continuation practice.

During the interview, it was agreed that if Claim 23 were amended to recite that the wearer's arm is maintained in a desired angle of external rotation in the body of Claim 23, the present rejection would be overcome. Applicants have amended Claim 23 as agreed during the interview. Thus, Applicants submit that the present rejection is moot. Additionally, Applicants submit that Claim 25 also defines over the Gaylord and Schaefer references, not only because it depends from Claim 23, but also on its own merit.

The Proposed Combinations Of Gaylord/Jagdat/Schaefer/Bastyr, et al. Does Not Make Claims 5, 6, 9, 13, 14, 19, 20, 21, and 24 Obvious

Although these rejections do not appear to be positively asserted in the outstanding Office Action, it appears that the Examiner is maintaining a rejection of Claims 5, 6, 9, 13, 14 (previously canceled), 20, 21, and 24 as being obvious over various combinations of Gaylord, Jagdat, Schaefer, and U.S. Patent No. 5,407,420 to Bastyr, et al. Applicants respectfully traverse these rejections. However, as noted above, Applicants submit that Claims 1, 15, and 23 define over the references cited with respect to these claims. Thus, Applicants submit that the rejection of Claims 5, 6, 9, 19, 20, 21, and 24 are moot. Additionally, Applicants submit that Claims 5, 6, 9, 13, 19, 20, 21, and 24 define over the cited references, not only because they depend from one of Claims 1, 15, or 23, but also on their own merit.

With respect to the rejection of Claim 13, during the interview, Applicants' counsel explained that none of the cited references show straight indicator lines that can provide a visual cue to the wearer when the sling is worn in a proper orientation of external rotation. In

particular, during the interview, Applicants' counsel pointed out that the Velcro® pads 18-21 shown in Figure 4 of Schaefer are not visible to the wearer when the wearer is wearing the shoulder sling of Schaefer. Rather, these Velcro® pads are covered with various straps and thus are not visible to the user when the Schaefer shoulder sling is being worn by the wearer. Thus, Schaefer fails to teach a shoulder sling for supporting a wearer's arm at desired angles of abduction and external rotation which includes a support pillow, an upper surface of which includes a straight line indicator that provides a visual cue to the wearer so that the wearer knows when the sling is properly fitted.

In contrast, Claim 13 recites a "shoulder sling for supporting wearer's arm at desired angles of abduction and external rotation, of a sling comprising: a support pillow including a contoured medial surface for abutting the wearer's torso, the lateral surface for operatively contacting and supporting the wearer's arm[,] an upper surface of the pillow includes a straight indicator line that provides a visual cue to the wearer so that a wearer knows when the sling is properly fitted."

This features was demonstrated with the sample shown to the Examiners during the interview. The sample shown to the Examiners, as recited in Claim 13, was configured to maintain a wearer's arm at a position of external rotation. The line on the top surface of the pillow of the sample, which is identified with the reference numeral 148 in the nonlimiting embodiment of Figure 3 of the present application, was parallel to the medial-lateral axis of the wearer's body when the sling was properly oriented in a position at which Applicants' counsel arm was held in a position of external rotation. Additionally, as the Examiners noted, the indicator line on the sample was visible to Applicants' counsel when Applicants' counsel wore the sample shoulder sling. Such an indicator line provides significant advantages.

For example, when the wearer is attempting to position the sling such that the wearer's arm is held at the desired angle of external rotation, the precise desired position of external rotation may not be obvious to the wearer. Thus, by providing an indicator line for the wearer, the wearer can more reliably and repeatedly achieve the desired angle of external rotation.

Thus, Applicants submit that Claim 13 clearly and nonobviously defines over the cited references.

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Additionally, as noted above, Applicants have added new Claims 26-28 which recite further subject matter related to the straight indicator line. For example, with regard to the Examiners' concern that the body of some of the independent claims do not refer to a position of external rotation, Applicants have added Claim 26 to expressly recite that the indicator line is a visual cue to the wearer that the sling is properly orientated in a place to hold the wearer's arm in a position of external rotation. Further, Claim 27 has been added to recite that the indicator line is generally parallel to an orthogonal direction relative to the wearer when the wearer is properly wearing the sling. Finally, Claim 28 has been added to recite that the indicator line is positioned to be parallel to the medial lateral axis of the wearer's body when the sling is properly fitted. In support of these new claims, Applicants respectfully direct the Examiner to paragraph [0052] of the present application. Applicants also submit that Claims 26-28 define over the cited references, not only because they depend from Claim 13, but also on their own merit.

Gaylord Does Not Make Obvious Claims 1 and 15

As noted at page 3 of the outstanding Office Action, Claims 1 and 15 also stand rejected under 35 U.S.C. § 103 as being obvious over Gaylord alone. Applicants respectfully traverse the present rejection.

However, as agreed during the interview, if Claims 1 and 15 were amended as noted above, the present rejection would be overcome. Thus, as also noted above, since Claims 1 and 15 have been amended as agreed during the interview, the present rejection has been overcome. Applicants expressly reserve the right to further prosecute the original versions of Claims 1-12 and 15-22 through continuation practice.

Claims 7 And 10-12 Are In Condition For Allowance

Applicants gratefully acknowledge the Examiners' indication that Claims 10-12 are allowed and Claim 7 stands objected to but would be allowable if rewritten into independent form. Thus, Applicants have amended Claim 7 into independent form.

Additionally, Applicants submit that because Claim 7 has been amended into independent form without any substantive change to Claim 7, amended Claim 7 is identical in scope to original Claim 7. Thus, Claim 7 has not been narrowed by any amendment and thus all equivalents of the recitations of original Claim 7 are also equivalents of the recitations amended Claim 7.

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### **CONCLUSION**

For the reasons presented above, Applicants respectfully submit that this application is in condition for allowance. If there is any further hindrance to allowance of the pending claims, Applicants invite the Examiner to contact the undersigned.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

**KNOBBE, MARTENS, OLSON & BEAR, LLP**

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